UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT GRUNDSTEIN,

Plaintiff,

vs.

WASHINGTON STATE BAR ASSOCIATION, *et al.*,

Defendants.

Case No. C12-569RSL

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Plaintiff's "Corrected 2d Amended Motion for TRO With Notice or Preliminary Injunction With Expedited Hearing" (Dkt. # 43) and the Washington Supreme Court Defendants' "Motion to Dismiss under Fed. R. Civ. P. 12(b)(1)" (Dkt. # 49).[1] For the reasons set forth below, the Court DENIES Plaintiff's motion and GRANTS Defendants' motion. The Court DISMISSES each of Plaintiff's requests for declaratory and injunctive relief.

I. BACKGROUND

Plaintiff is no stranger to this Court. Neither is his claim. Mr. Grundstein was admitted to practice law in Washington on April 25, 1991. It does not appear that he ever represented a paying client in Washington. Dkt. # 20-1 at 28. Nevertheless, on November 12, 2010, the Washington State Bar Association ("WSBA") filed formal

[1] This motion was joined by each of the other Defendants. Dkt. # 52.

disciplinary proceedings against him, accusing him of, among other things, a long history of frivolous and harassing filings in this state and others. Compare Amended Complaint (Dkt. # 8) at 8, with Dkt. # 20-1 (Bar Findings). Ever since, Plaintiff has waged a full-out assault against those proceedings in both state and federal court.

On February 28, 2011, Plaintiff requested that the Washington Supreme Court enjoin his disciplinary proceedings. His request was denied.

On April 25, 2011, he filed suit in this Court against the WSBA official who filed the disciplinary complaint against him. See, e.g., Amended Complaint, Grundstein v. Eide, No. C11-692RSL (W.D. Wash. June 20, 2011), ECF No. 18 (Lasnik, J.). He asked this Court to enjoin the disciplinary proceedings against him and to declare many of Washington's Rules for Enforcement of Lawyer Conduct unconstitutional and unenforceable. Id. Citing Younger v. Harris, 401 U.S. 37, 40–41 (1971), this Court dismissed his claims. Order of Dismissal, Grundstein v. Eide, No. C11-692RSL (W.D. Wash. Aug. 17, 2011), ECF No. 23 (Lasnik, J.).

Two days later, Plaintiff filed a similar suit in King County Superior Court. That suit likewise ended in dismissal, as well as Rule 11 sanctions against Plaintiff. See King County Superior Court Case No. 11-2-28470-1 SEA. While that action was pending the Washington Supreme Court denied a second request by Plaintiff to enjoin the proceedings against him. See Washington Supreme Court Case No. 865051.

In any case, on September 26, 2011, Plaintiff's disciplinary proceeding took place over Plaintiff's many objection with him in attendance. On October 14, 2012, the hearing officer issued a 28-page written Recommendation that detailed the allegations against Plaintiff, her findings, and her ultimate recommendation that Plaintiff be disbarred. Dkt. # 20-1 at 1–28. Plaintiff appealed those findings and recommendations to the WSBA Disciplinary Board. See id. at 36–40. He also sought to introduce "new"

evidence. Id. On March 8, 2012, after "review[ing] the materials submitted by the parties, hear[ing] oral argument, and consider[ing] the applicable case law and rules," the Board adopted the hearing officer's findings and recommendation. Id. at 42.

On April 3, 2012, Plaintiff appealed the Board's decision to the Washington Supreme Court. See id. at 44. He filed the instant action against each Washington Supreme Court justice, the WSBA, and various individuals and entities associated with the WSBA the next day, see Dkt. # 8. after being informed that his appeal to the Washington Supreme Court was untimely filed, Dkt. # 20-1 at 44. He again asks this Court to enjoin the proceedings against him and award him declaratory relief. Dkt. # 8 at 39–40. He also adds claims against the WSBA and the affiliated individuals and entities for monetary damages. Id. at 39. He specifically disclaims any damages claim against the Supreme Court Defendants. Dkt. # 57 at 4.

After filing suit in this Court, Plaintiff moved the Washington Supreme Court for an enlargement of time to file his appeal. Dkt. # 20-1 at 45–49. On June 18, 2012, the Washington Supreme Court issued an order disbarring Plaintiff. Dkt. # 50 at 4. That order took effect on June 25, 2012. Id.

II. DISCUSSION

Once again, Plaintiff asks this Court to award him injunctive and declaratory relief.[2] Dkt. # 43. And, once again, each Defendant moves the Court to dismiss those requests under a variety of theories. Dkt. # 49. Of them, the Court need only consider one: the Younger abstention doctrine.

[2] The Court notes that the present motions do not concern Plaintiff's request for damages, which are particular to the WSBA Defendants.

The elements of the doctrine are straightforward: "If a state-initiated proceeding is ongoing, and if it implicates important state interests . . . , and if the federal litigant is not barred from litigating federal constitutional issues in that proceeding, then a federal court action that would enjoin the proceeding, or have the practical effect of doing so, would interfere in a way that Younger disapproves." Gilbertson v. Albright, 381 F.3d 965, 978 (9th Cir. 2004) (en banc) (overruling Green v. City of Tucson, 255 F.3d 1086, 1098, 1102 (9th Cir. 2001) (en banc), to the extent it required "'direct interference' as a condition, or threshold element, of Younger abstention"). Accordingly, when a federal claim for injunctive or declaratory relief is brought and is not "'wholly unrelated' to the issues in the pending state proceeding," id. at 918 n.14, "dismissal (and only dismissal) is appropriate" absent a demonstrated showing of extraordinary circumstances. Id. at 981.[3]

With this framework in mind, the Court turns to the facts of this case. In regard to the first abstention element, the Court disagrees with Plaintiff's contention that the Washington Supreme Court's disbarment order negates Younger's application. To the contrary, "[t]he critical date for purposes of deciding whether abstention principles apply is the date the federal action is filed." Gilbertson, 381 F.3d at 969 n.4. "In other words, Younger abstention requires that the federal courts abstain when state court proceedings were ongoing at the time the federal action was filed," regardless of whether "the state court proceedings had ended prior to the district court's decision to abstain." Beltran v. State of California, 871 F.2d 777, 782 (9th Cir. 1988). Thus, because the very state court proceedings Plaintiff sought to enjoin or otherwise interfere with, see Samuels v. Mackell, 401 U.S. 66, 73 (1971), "were ongoing at the time [Plaintiff's] federal action

[3] Notably, claims for money damages are subject only to stay under Younger, not dismissal. Gilbertson, 381 F.3d at 982.

was filed," the first Younger element is met. See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432–33 (1982) (concluding that "state bar disciplinary hearings within the constitutionally prescribed jurisdiction of the State Supreme Court constitute an ongoing state judicial proceeding").

The Court likewise finds that the bar proceedings in this case "implicate[] important state interests." Gilbertson, 381 F.3d at 978. As found by the Supreme Court, states have "an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses." Middlesex, 457 U.S. at 432–33.

Finally, the Court finds that Plaintiff had ample opportunity to present his federal constitutional claims in the preceding below. Again as in Middlesex, at a minimum, Plaintiff had the opportunity to present his constitutional claims to the Washington Supreme Court. Cf. id. at 436. Nothing more is required. See Gilbertson, 381 F.3d at 983. Plaintiff's "failure to avail himself of the opportunity does not mean that the state procedures are inadequate." Id.; accord Juidice v. Vail, 430 U.S. 327, 337 (1977) ("Appellees need be accorded only an opportunity to fairly pursue their constitutional claims in the ongoing state proceedings, . . . and their failure to avail themselves of such opportunities does not mean that the state procedures were inadequate.").

Having concluded that each of the Younger abstention elements are met, the Court must next consider whether it should decline to abstain because Plaintiff has demonstrated that extraordinary circumstances are present. Generously construed, Plaintiff argues three tenable examples of extraordinary circumstances: first, that his claims involve First Amendment concerns that are "particularly unsuitable for Abstention," Dkt. # 57 at 12; second, that the hearing officer was biased against him due to her employer's affiliation with the WSBA, Dkt. # 8 at 9; and, third, that his initial hearing was conducted in bad faith, Dkt. # 8 at 9–11. None suffice.

First, Younger itself held, "We do not think . . . that a federal court can properly enjoin enforcement of a statute solely on the basis of a showing that the statute 'on its face' abridges First Amendment rights."[4] Younger, 401 U.S. at 53–54. To the contrary, First Amendment concerns amount to extraordinary circumstances only when "the challenged provision is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." Potrero Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876, 884 n.9 (9th Cir. 2011) (internal quotation marks omitted) (quoting Younger, 401 U.S. at 53–54 (citation omitted)). And in this case, Plaintiff alleges nothing more than that one of the Washington's Rules of Professional Conduct he was found to have violated is unconstitutionally vague: "RPC 3.1 ("frivolous conduct") is so vague, it is not susceptible to severance or a saving/limiting construction in state court." Dkt. # 57 at 12. That is not enough. See, e.g., Middlesex, 457 U.S. at 432–33 (concluding that Younger abstention applied even though the attorney-plaintiffs "charged that the disciplinary rules were facially vague and overbroad" under the First Amendment).

Second, "one who alleges bias must overcome a presumption of honesty and integrity in those serving as adjudicators," Hirsh v. Justices of Sup. Ct. of State of Cal., 67 F.3d 708, 713 (9th Cir. 1995) (citations and internal quotation marks omitted), and Plaintiff's bare-bones allegation that his hearing officer was biased against him because she was employed by an individual on the WSBA's "Judicial Selection Committee," Dkt. # 8 at 9, falls woefully short of that standard. See Withrow v. Larkin, 421 U.S. 35, 47 (1975). Frankly, it does not even amount to a plausible allegation. See Ashcroft v.

[4] Not one of the case relied upon by Plaintiff to support his position regarding his First Amendment claim concerns abstention in the Younger context.

Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Moreover, Plaintiff does not assert any bias on the part of the Washington Supreme Court or even the Disciplinary Board that reviewed and adopted the hearing officer's findings and recommendations. Accordingly, the Court could not find that "the state forum [wa]s 'incompetent by reason of bias." Potrero, 657 F.3d at 884 n.9 (emphasis added); see Gilbertson, 381 F.3d at 983.

And, third, the Court finds that Plaintiff has presented no plausible evidence that the "state proceeding [were] motivated by a desire to harass or [were] conducted in bad faith." Potrero, 657 F.3d at 884 n.9. Plaintiff's allegation that the WSBA has primarily disciplined independent solo practitioners does not state even a plausible claim of bad faith. It is just as easily explained by the fact that solo practitioners have less inherent oversight or that those individual attorneys were actually acting inappropriately. See Iqbal, 129 S. Ct. at 1949 (If "a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (citation and internal quotation marks omitted)). Moreover, each and every allegation of bad faith made by Plaintiff, Dkt. # 8 at 9–11, is based solely on actions allegedly taken by the hearing officer.[5] He raises no complaint against the Disciplinary Board or the Washington Supreme Court and thus cannot demonstrate that the entirety of the proceedings were either "motivated by a desire to harass or [were] conducted in bad faith." Potrero, 657 F.3d at 884 n.9.

[5] The Court thinks it worthwhile to note that many of Plaintiff's claims are in fact refuted by the documentary evidence filed in this case. For example, Plaintiff alleges that "[t]he Hearing Officer found Grundstein changed a felony charge to a misdemeanor in order to purchase a gun sometime in the past (2002, 2003?)." Dkt. # 8 at 11. However, the officer's findings plainly state: "Respondent admitted that he altered [the court's order] to reflect that he was only charged with a fourth degree misdemeanor as opposed to a first degree misdemeanor." Dkt. # 20-1 at 5 (emphasis added).

In sum then, the Court finds that the Younger abstention doctrine applies to Plaintiff's claims for injunctive and declaratory relief and that "no bad faith, harassment, or other exceptional circumstances" exist to preclude abstention. See Middlesex, 457 U.S. at 437. Accordingly, as to those claims, "dismissal (and only dismissal) is appropriate." Gilbertson, 381 F.3d at 981.

III. CONCLUSION

For all of the foregoing reasons, the Court DENIES Plaintiff's motion for a preliminary injunction (Dkt. # 43) and GRANTS Defendants' motion to dismiss (Dkt. # 49) Plaintiff's claims for injunctive and declaratory relief under the Younger abstention doctrine with prejudice. See Gilbertson, 381 F.3d at 981 ("When an injunction is sought and Younger applies, it makes sense to abstain, that is, to refrain from exercising jurisdiction, permanently by dismissing the federal action because the federal court is only being asked to stop the state proceeding." (emphasis in original)); Rosenthal v. Carr, 614 F.2d 1219, 1220 (9th Cir. 1980) (affirming the dismissal with prejudice under Younger of an attorney's suit against the California State Bar "for preliminary and permanent injunctions and for declaratory relief under 42 U.S.C. § 1983"). Practically speaking, this results in the dismissal of all claims against the Supreme Court Defendants in this action. Only Plaintiff's damage claims against the WSBA and the individuals and entities affiliated with it remain. Cf. Dkt. # 53.

DATED this 13th day of August, 2012.

Robert S. Lasnik
United States District Judge